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PATENT
IBM Docket No. GB9-2000-0047-US1

In the United States Patent and Trademark Office

Date: 12-12-2003

In re Application of: Alan P. Stevens

Filed: August 2, 2000

For: Performance Profiling Tool

Serial Number: 09/631,224

Art Unit: 2126

Examiner: Ho, The T

Inventor's Declaration

Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Technology Center 2100

Sir:

I have been advised that the claims of the subject application have been rejected over Admitted Prior Art set forth in the Background of the Invention section of the application as originally filed.

I hereby declare that the application as originally filed mistakenly described some of my own prior work as prior art. The material at page 10, line 21 through page 12, line 7, of the application as originally filed actually (hereinafter Described Work) describes work which I did as a precursor to the invention actually described and claimed in the subject application.

It is my belief that the Described Work does not constitute prior art as that term is defined in the patent laws of the United States. It is now my understanding that for any work to be considered prior art under United States law it must have been:

- a) known or used by others in the United States, or patented or described in a printed publication in the United States or a foreign country before my invention of the subject matter of the subject application (35 USC 102(a));
- b) patented or described in a printed publication in the United States or a foreign country or in public use or on sale in the United States more than a year prior to the effective filing date of the subject application (35 USC 102(b));
- c) patented or caused to be patented or be the subject of an inventor's certificate by me or by legal representatives or assigns in a country outside of the United States prior to the effective filing date of the subject application on an application filed more than 12 months before the effective filing date of the subject application (35 USC 102(d));
- d) described in an application for patent by another published in the United States before my invention of

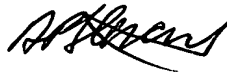
the subject matter of the subject application or in a United States patent based on a United States application filed before my invention of the subject matter of the subject application (35 USC 102(e)); or e) the work of another who invented it before I did and who has not abandoned, suppressed or concealed it (35 USC 102(g)).

On the basis of facts personally known to me or on information and belief, none of the foregoing applies to the Described Work and the Described Work is not prior art under United States patent law.

I have reviewed the amendments to the application to be submitted concurrently with this declaration and declare the subject application, as amended, accurately describes the actual state of the prior art as of the effective filing date of the subject application.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 USC 1001 and that such willful false statements may jeopardize the validity of the subject application or any patent issued thereon.

Respectfully Submitted,



Alan P. Stevens